

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO IBAY Y MACEDA, ACCUSED-APPELLANT.

G.R. No. 101631. June 08, 1994

Ponente: PUNO, J.

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PUNO, J.:

On September 5, 1989, private complainant DONNA VILLANUEVA executed a Sworn Statement[1] against appellant ROMEO MACEDA IBAY, accusing him of rape. Soon after, the police authorities arrested appellant and put him in jail.[2] In an Information, dated September 13, 1989, he was charged with rape, viz.:

"That on or about the 14th day of August, 1989, in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Donna E. Villanueva, a girl below 12 years old, against her will and consent."

The case was docketed as Crim. Case No. 1048, and assigned to the RTC of San Mateo, Rizal, Br. 77.[3] After appellant pleaded not guilty to the charge against him on September 29, 1989,[4] trial ensued. The prosecution presented four witnesses, namely: private complainant, DONNA VILLANUEVA;[5] her mother, SUSAN EUSEBIO[6] and, half sister, JOCELYN CONSTANTINO;[7] and DR. EMMANUEL L. ARAÑAS.[8] On the other hand, the following witnesses testified for the defense: appellant ROMEO MACEDA IBAY;[9] his employer, LEONARDO CAHATOL,[10] and his fellow construction worker, LORENZO ASPIRAS.[11]

After trial, the lower court convicted appellant. The dispositive portion of the impugned Decision, dated August 2, 1991, reads as follows:

"WHEREFORE, this Court finds the accused, Romeo Ibay, GUILTY beyond reasonable doubt and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the victim, Donna Villanueva, the sum of Thirty Thousand Pesos (P30,000.00).

"SO ORDERED."

Thus, this appeal.

The records show that private complainant is the eldest of five children.[12] She was born on January 7, 1978,[13] and was eleven (11) years, seven (7) months, and seven (7) days old on August 14, 1989, the day she was raped. She lives in Daang Hari, Rodriguez, Rizal with her mother, stepfather, half-sisters, and half-brothers. Their house is located several meters from a nipa hut owned by a certain Mang Rufing. In 1989, the hut was occupied by several persons, among them appellant Romeo Ibay.[14]

According to private complainant, at around four o'clock in the afternoon of August 14, 1989, she was fetching water from the artesian well about twenty-one (21) meters from their house, and about two (2) meters from Mang Rufing's hut.[15] She was called by appellant who was near the door of the hut.[16] When she approached him,[17] appellant grabbed her arm, and forcefully pulled her inside the empty hut. There, he removed her short

pants and made her lie down.[18] She did not resist or shout because he threatened to kill her if she did.[19] He shed off his own short pants and without much ado mounted her. He continued to intimidate her with threats of harm. She cried and begged him to stop because he was hurting her. He refused even if she tried to push him off her with her bare hands.[20]

About a minute after appellant bestraddled private complainant, he succeeded in inserting his penis into her vagina. Pain punctured the private complainant.[21] During the copulation, appellant rocked back and forth -- "Umuuga po siya," according to private complainant.[22] A little later, she felt something streaming which she described as "yong tila ihi" or like urine come out of appellant.[23] When he dismounted her, she saw blood coming from her private part.[24] Before leaving, he warned her to keep her mouth shut or face death.[25]

Private complainant took appellant's threat to heart, and for nearly three weeks, remained silent.[26] She decided to break her silence due to another incident that happened on September 3, 1989. In the afternoon of that day, private complainant was fetching water from the artesian well near Mang Rufing's hut. Appellant appeared and again tried to drag her inside the hut. Luckily, she was able to escape. She ran to her house, but did not inform her mother, Susan Eusebio, about the incident.[27] Private complainant's sister, Jocelyn Constantino, however, witnessed what happened and reported to their mother.[28] Private complainant confirmed Jocelyn's story. She also revealed to her mother her defloration on August 14, 1989.[29]

Susan Eusebio cried a river when she discovered the dastardly abuse perpetrated by appellant on her daughter.[30] Dark thoughts and emotions crossed her mind. She wanted to kill appellant but banished the thought for the sake of her other children.[31] She hesitated in reporting to the police, fearful of the humiliation their family would experience.[32] She trembled at the thought that if people found out about the rape, they would tease private complainant.[33] That night, Susan informed her husband, Joselito Constantino, about the molestation. Jolted, Joselito wanted to confront appellant, but was dissuaded by Susan.[34]

Thenceforth, private complainant braced herself and decided to seek justice. On September 5, 1989, she went to the police authorities at the Municipal Hall of Rodriguez, Rizal with her mother. There, she gave a written statement about her sexual abuse on August 14, 1989.[35] Accompanied by her mother and her uncle,[36] she proceeded to Camp Crame, and underwent a medical examination conducted by Dr. Emmanuel L. Arañas.[37] The doctor's findings are embodied in MEDICO-LEGAL REPORT NO. M-1735-89 (Exh. "B"). It reads as follows:

"CASE: Alleged Rape SUSPECT/S: "BOBBY"

VICTIM/S: VILLANUEVA, Donna

BIRTHDAY: 07 January 1978

TIME AND DATE RECEIVED: 1400H, 05 September 1989

REQUESTING PARTY/UNIT: Stn Comdr, Rodriguez Pol Stn, Rizal INP, Rodriguez, Rizal

SPECIMEN SUBMITTED:

Person of Donna Villanueva, about 11 years old and a resident of Daang Hari, St., Brgy Manggahan, Rodriguez, Rizal.

PURPOSE OF LABORATORY EXAMINATION:

To determine physical signs of sexual abuse.

F I N D I N G S:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with pinkish brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and soft.

GENITAL:

There is lanugo type growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type hymen with shallow, healed lacerations at 2 and 8 and deep, healed laceration at 5 o'clock. External vaginal orifice offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with xxx rogosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Subject is in non-virgin state physically. There are no external signs of recent application of any form of trauma.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

TIME AND DATE COMPLETED: 1515h, 05 September 1989

EXAMINED BY:

(sgd.)

EMMANUEL L. ARAÑAS, MD

Medico-Legal Officer

APPROVED:

(sgd.)

BIENVENIDO G. TORRES

Major, MC (PC)

OIC, Med-Legal Br.

NOTED:

(sgd.)

PAULINO B. SILAN

Colonel PC (BSC)

Commanding Officer"

(Exh. "B"; Original Records, p. 53.)

Appellant denied the charge against him and shields himself with the defense of alibi. He testified that his permanent residence is in Tramo, Pasig, Metro Manila. He stayed at Mang Rufing's hut from July, 1989 until he was arrested in September, 1989.[38] At that time, he was vacationing with his sister,[39] and was working as a plumber for Leonardo Cahatol.[40] Appellant alleged that on August 14, 1989, he was at work, helping construct a deep well in Green Heights Subdivision in Marikina, Metro Manila. He said he returned home from work at

seven or eight o'clock at night.[41]

Appellant's alibi was corroborated by his employer and co-worker. His employer, Leonardo Cahatol, confirmed that he and four helpers, among them appellant, started working on a deep-well drilling project in Green Heights Subdivision, Fairlane, Marikina on August 12, 1989. The job took a week, during which he and his helpers worked daily from eight or nine o'clock in the morning, to nine or eleven o'clock in the evening. Leonardo recalled that on August 14, 1989, they spent the day drilling and quit working at ten or eleven o'clock in the evening.[42] Similarly, Lorenzo Aspiras testified that they worked on said deep-well project for five or six days, from August 13, 1989. He also related that on August 14, 1989, they worked from eight o'clock in the morning until seven o'clock in the evening.[43]

In this forum, appellant now insists that the "(p)rosecution's evidence is deficient to sustain a verdict of conviction beyond reasonable doubt." [44] Denouncing private complainant's story as "doubtful" [45] he argues that: her claim that she did not scream for help nor offer any resistance other than to try and push appellant off her does not jibe "with common knowledge and experience of mankind;" [46] her "seeming nonchalant behavior" [47] in not reporting her molestation to her mother until twenty days after its occurrence must "engender suspicion that the charge of rape x x x was untrue and fabricated;" [48] "(i)t certainly raises quizzical eyebrows" [49] that private complainant offered no able explanation why none of the other occupants of Mang Rufing's hut were there when the rape took place; and private complainant contradicted herself when she first narrated that when appellant was removing her shorts, he warned her not to shout (TSN of October 26, 1989), then also testified that he threatened to kill her (TSN of November 14, 1989).

Appellant likewise attacks the credibility of private complainant's mother, Susan Eusebio. He contends: "it does not rhyme with reason that an outraged mother would hesitate for two (2) days after knowledge of the rape whether to take action against the appellant, on the pretext that she was ashamed that other people might tease her daughter." [50]

Finally, appellant argues that the medico-legal findings, especially the opinion that there were no signs or trauma on the external area of the vagina of private complainant, negate the commission of rape. [51]

We affirm appellant's conviction.

On the whole, the trial court did not err in weighing the evidence of the parties. We find no cogent reason to depart from the oft-repeated general rule that findings of fact of trial courts, particularly with respect to the credibility of witnesses who personally appeared and testified before them, must be given great weight and should not be disturbed by appellate courts. The purported loopholes, inconsistencies and improbabilities in private complainant's testimony alluded to by appellant do not exist in the most part. And, where they do, the testimonial imperfections hardly relate to facts material to the commission of statutory rape.

Firstly, that private complainant merely cried and tried to push appellant off her cannot cancel her credibility. Behavioral psychology teaches us that different people react to similar situations dissimilarly. Most women would resist a sexual assault with a wild struggle. Others become virtually catatonic because of the mental shock they experience. Yet, it can never be successfully argued that the latter are any less sexual victims than the former. As we have held in an earlier case:

"xxx The fact that there was no struggle or outcry from the offended party is immaterial in the rape of a child below twelve years of age. There could still be a conviction despite the absence of force and intimidation because the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own." [52]

Secondly, this court has repeatedly held that delay in reporting a rape incident due to death threats cannot be counted against the victim.[53] This rule applies with more force to the case at bench, where complainant was only eleven (11) years old when she was violently initiated into womanhood. It is not unlikely that a girl of such tender age would be intimidated into silence by the mildest threat against her life. A young girl, unlike a mature woman, cannot be expected to have the courage and intelligence to immediately report a sexual assault committed against her especially when a death threat hangs over her head.[54] To her simple, unsophisticated mind, appellant's threat was not an idle one as shown by her following testimony:

"Q. Before (appellant) left, did he tell you anything?

"A. Yes, sir.

"Q. What was that he told you?

"A. He told me not to tell it to anybody, sir, because if I will do it, he will kill me.

"Q. And, what did you experience or feel when you heard the threats of the accused to you?

"A. I was afraid, sir.

"Q. Why were you afraid?

"A. Because he might really do it, sir."

(TSN of October 26, 1989, pp. 7-8.)

(Emphasis supplied.)

Thirdly, contrary to the contention of appellant, private complainant did not have the burden of proof to explain why Mang Rufing's hut was empty at the time the rape occurred. Her testimony that none of the other occupants of the hut were there at that time, need not be accompanied by any explanation. She merely stated a fact and the allegation was undisputed by appellant who failed to contradict private complainant on her testimony.

Fourthly, as correctly contended by the Office of the Solicitor General in its brief:

"As regards the cited 'contradiction' in Donna's testimony, suffice it to state that this claim is x x x gratuitous x x x since there was actually no inconsistency in Donna's testimony to speak of. On the contrary, her testimonies on October 26, 1989 and November 14, 1989 as cited by appellant, compliment each other as they pertain to a single idea, that is, for Donna 'not to shout.' Thus:

Donna's Testimony on October 26, 1989

'Q. And what did the accused tell you during that time that his penis was inserted into your vagina?

A. He was telling me not to shout, sir.'

(p. 7, t.s.n.)

x x x x

Donna's Testimony on November 14, 1989

'Q. Why did you not shout when he was removing your shorts?

A. Because he was threatening me that he will kill me whenever I will shout, sir.'

(p. 12, t.s.n.)"[55]

Appellant cannot exculpate himself by riding on minor inconsistencies in private complainant's testimony. Errorless testimonies cannot be expected especially when a witness is recounting details of a harrowing experience.[56] Private complainant's testimony deserves the badge of credence as it is free from substantial self-contradictions.[57] Given when she was eleven (11) years old, no improper motive can be ascribed to her other than her sincere desire to tell the truth and tell it all.

Appellant's characterization of Susan Eusebio, private respondent's mother, as an incredible witness is equally not persuasive. She rationally explained why she waited for two days before she reported the rape to the police. She considered the humiliation they would suffer, and the teasing that would torture the eleven- year-old private complainant if people discovered about the rape. This prudent posture is understandable for rape stigmatizes the victim worse than the perpetrator. In the present as in the past, our culture puts premium in purity and virginity as virtues. A non-virgin, even if deflowered against her will, is often times treated, albeit secretly, with unkind scowl and scorn in our society. It was not unreasonable for Susan to protect her young child from society's tart tongues.

Appellant's reliance on the medico-legal report is misplaced. In the first place, there was no categorical statement made by Dr. Arañas that the results of his physical examination on private complainant do not support the occurrence of rape on August 14, 1989. In the second place, for rape to be committed, it is not necessary that there be marks of physical violence present on the victim's body.[58]

The case at bench involves the crime of statutory rape under Article 335(3) of the Revised Penal Code. In this offense, only two elements need to be established: that the accused had sexual intercourse with the offended party; and that the latter was below twelve years of age at the time of the coitus. The evidence presented proved that appellant succeeded in having sexual intercourse with private respondent on August 14, 1989, when she was only eleven years old. His defenses of denial and alibi cannot prevail over private complainant's positive identification of him as her rapist. She testified during direct examination, viz.:

"xxx xxx xxx"

"Q. Now, while you were fetching water near the hut of Rufing, what happened?

"A. Romeo Ibay saw me while I was fetching water, and he called me, sir.

"Q. If this Romeo Ibay is in the courtroom, will you be able to identify him?

"A. Yes, sir.

"Q. Please point to this Romeo Ibay.

"A. He is there, sir.

(Witness pointing to a person who answered to the name of ROMEO IBAY)

"Q. When this Romeo Ibay called you, what did you do?

"A. I approached him, sir.

"Q. When you approached Romeo Ibay, what happened?

"A. He held my arm and pulled me inside the hut, sir.

"Q. And whose hut are you referring to?

"A. At the hut of Rufing, sir.

"Q. Were you dragged inside the hut of Rufing?

"A. Yes, sir.

"Q. Were there other persons inside that hut of Rufing when you were dragged there by Romeo Ibay?

"A. None, sir.

"Q. While you were inside the hut of that Rufing, what happened?

"A. He removed my short pants, sir, and he let me lie down, sir.

"Q. And what happened after you were made to lie down by the accused?

"A. He also removed his short pants and then he lay on me, sir.

"Q. And when he lay unto you, what happened?

"A. I was crying then and I told him that I was feeling pain, but he did not stop, sir.

"Q. Why did you feel pain at that time?

"A. Because I really felt pain, sir.

"Q. What was the accused doing to you that caused pain?

"A. He inserted his organ to my organ, sir.

"Q. When you said his organ, you are referring to the penis of the accused?

"A. Yes, sir.

"Q. And when you were referring to your organ, you were referring to your vagina?

"A. Yes, sir.

"Q. Now, specifically, what was the accused doing when he inserted his penis to your vagina?

"A. He lay on top of me, sir.

"xxx xxx xxx"

(TSN of October 26, 1989, pp. 4-6.)

When examined further by the trial court judge, private complainant was unwavering:

"xxx xxx xxx

"Q. So, after he (referring to appellant) removed your shorts, what else happened?

"A. He lay me down, sir.

"Q. After that, what happened next?

"A. He lay on top of me, sir.

"Q. What was Romeo Ibay wearing at that time?

"A. He was wearing a t-shirt and short pants, sir.

"Q. Did Romeo Ibay remove his t-shirt and his short pants before he lay on top of you?

"A. Yes, sir.

"Q. How about your dress? When he lay on top of you, was it still on top of your body?

"A. Yes, sir.

"Q. What was your dress then?

"A. A striped t-shirt, sir.

"Q. Romeo Ibay did not remove your t-shirt?

"A. No, sir.

"Q. What did he do after lying on top of you?

"A. He inserted his organ to my organ, sir.

"Q. He was able to insert his organ immediately when he lay on top of you?

"A. No, sir.

"xxx xxx xxx"

"Q. From the moment he lay on top of you, how many minutes elapsed before Romeo Ibay was able to insert his organ into your organ?

"A. One (1) minute, sir.

"Q. If your estimate is correct, then Romeo Ibay was able to insert his organ into your organ without too much force.

"A. It took him a little bit longer before he was able to insert his organ into my organ, sir.

"Q. What did you feel when he was inserting his organ into your organ?

"A. I felt pain, sir.

"Q. Did you notice any blood in your organ after he inserted his organ into your organ?

"A. Yes, sir.

"Q. When did you notice it?

"A. After that, sir.

"Q. How many times did he insert his private organ into your organ?

"A. Only once, sir.

"xxx xxx xxx"

"Q. For how many minutes did Romeo Ibay lie on top of you?

"A. Three (3) minutes, sir.

"Q. Did you notice anything come out from the organ of Romeo Ibay after three (3) minutes or during the three (3) minutes when he was on top of you?

"A. Yes, sir.

"Q. What thing did you see?

"A. 'Yong tila ihi ho.

"Q. Describe that thing that you saw or noticed that came out from the organ of Romeo Ibay?

"A. I just felt it, sir but, I did not see it.

"xxx xxx xxx

"Q. Do you know the meaning of the word nilabasan?

"A. No, sir.

"Q. You said that he lay on top of you. What was the accused doing when he lay on top of you, when you were lying and his body was on top of you?

"A. Umuuga po siya.

"xxx xxx xxx

(TSN of November 14, 1989, pp. 12-19.)

Finally, this court is revolted by the obscene manner by which private respondent was snatched from the cradle of youth and innocence, and increases the award of damages in her favor from Thirty Thousand Pesos (P30,000.00) to Fifty Thousand Pesos (P50,000.00).

IN VIEW WHEREOF, the instant appeal is DISMISSED and the conviction of appellant ROMEO MACEDA IBAY is AFFIRMED. The Decision, dated August 2, 1991, of the RTC of San Mateo, Rizal, Br. 77 in Crim. Case No. 1048 is hereby MODIFIED by increasing the award of damages to Fifty Thousand Pesos (P50,000.00). Costs against appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Exhibit "A".

[2] TSN of March 27, 1990, p. 9.

[3] Presided by Judge Francisco C. Rodriguez, Jr..

[4] Original Records, p. 5.

[5] She testified on October 26, 1987 and November 14, 1989.

[6] She testified on November 28, 1989.

[7] She testified on November 28, 1989.

[8] He testified on January 9, 1990.

[9] He testified on March 27, 1990.

[10] He testified on July 4, 1990.

[11] He testified on June 5, 1990.

[12] See TSN of October 26, 1989, pp. 16-17. TSN of November 28, 1989, p. 17. Private complainant is the

daughter of Susan Eusebio by her first husband. Susan's four other children -- private complainant's siblings -- are by her second husband, Joselito Constantino.

[13] Exhibit "C".

[14] TSN of October 26, 1987, p. 26.

[15] TSN of November 14, 1989, p. 10. Private complainant testified that only she and her siblings were in their house in the afternoon of August 14, 1989. Her mother, Susan Eusebio testified that, around the time of the rape, she was out of their house, buying their viand for that evening (TSN of November 28, 1989, p. 19.)

[16] Ibid., at p. 40; TSN of October 26, 1989, pp. 4, 20.

[17] TSN of October 26, 1989, pp. 5, 20; TSN of November 14, 1989, p. 41.

[18] TSN of October 26, 1989, pp. 5-6, 21-22; TSN of November 14, 1989, pp. 11-12.

[19] TSN of November 14, 1989, p. 12.

[20] TSN of October 26, 1989, pp. 6, 22; TSN of November 14, 1989, pp. 13-14, 19-20.

[21] TSN of November 14, 1989, pp. 14-15.

[22] Ibid, at p. 18.

[23] Id., at p. 17.

[24] Id., pp. 15-18.

[25] TSN of October 26, 1989, p. 7.

[26] Ibid., at p. 23; TSN of November 14, 1989, pp. 18-19.

[27] TSN of October 26, 1989, pp. 8-9.

[28] Ibid., at p. 10.

[29] Id., at p. 11.

[30] Id., at 12.

[31] TSN of November 28, 1989, p. 12.

[32] Ibid., at p. 14.

[33] Id., at p. 23.

[34] Id., at p. 24.

[35] Id., at p. 14; TSN of October 26, 1989, pp. 12--13.

[36] TSN of November 28, 1989, p. 25.

[37] Ibid., at p. 14.

[38] TSN of March 27, 1990, pp. 3, 12.

[39] Ibid..

[40] Id., at p. 12.

[41] Id., at pp. 17-18.

[42] See TSN of July 24, 1990.

[43] See TSN of June 5, 1990.

[44] Appellant's Brief, p. 6; Rollo, p. 38.

[45] Appellant's Brief, p. 7; Rollo, p. 39.

[46] Appellant's Brief, 9; Rollo, p. 41.

[47] Ibid..

[48] Id..

[49] Appellant's Brief, p. 11, Rollo, p. 43.

[50] Ibid..

[51] Appellant's Brief, p. 12; Rollo, p. 44.

[52] People vs. Bacani, 181 SCRA 393, 399-400 (1990).

[53] See People vs. Lucas, 181 SCRA 316 (1990); People vs. Oydoc, 123 SCRA 250 (1983);

[54] See People vs. Olivar, 215 SCRA 759 (1992).

[55] Brief for Plaintiff-Appellee, pp. 15-16; Rollo, pp. 80-81.

[56] People vs. Paciente, 210 SCRA 86 (1992).

[57] See People vs. Cabodac, 208 SCRA 787 (1992).

[58] People vs. Feliciano, 195 SCRA 19 (1991); People vs. Soronio, 204 SCRA 741 (1991).

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